

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

VIOME, INC.,

Plaintiff,

v.

BIOHM HEALTH LLC, dba PATHOBIOME LLC,

Defendant.

CASE NO.: 2:18-cv-01566

COMPLAINT FOR TRADEMARK  
INFRINGEMENT, FALSE  
DESIGNATION OF ORIGIN AND  
UNFAIR COMPETITION

JURY TRIAL DEMANDED

Plaintiff, VIOME, Inc., (“Viome”) comes now and alleges as follows:

**PARTIES**

1. Plaintiff Viome, Inc. is a Delaware corporation with its principal place of business in Bellevue, Washington.

2. Upon information and belief, Defendant, Biohm Health LLC (“Biohm”) is an Ohio Limited Liability Company doing business as PathoBiome LLC with its principal place of business in Cleveland, Ohio.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over the Lanham Act claims in this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a), and jurisdiction over the state law claims in this action under general principles of ancillary and supplemental jurisdiction pursuant to 28 U.S.C. § 1367

1 and 28 U.S.C. § 1338(b).

2 4. This Court is the proper venue because Biohm markets and sells products in this  
3 jurisdiction via interactive Internet websites such as Biohmhealth.com, Amazon.com and  
4 Google.com. Biohm has used, without authorization, Plaintiff's registered VIOME mark in its  
5 advertisements on such interactive Internet websites in violation of various provisions of the  
6 Lanham Act. Biohm knew and intended that its infringing use of the VIOME mark would be  
7 viewed by consumers throughout the United States, including those located in the Western District  
8 of Washington. Biohm's Internet advertisements are readily viewable and accessible by residents  
9 of this judicial district.  
10

11 5. Accordingly, both jurisdiction and venue are proper in this court pursuant to 28  
12 U.S.C. § 1391.  
13

#### 14 **BACKGROUND FACTS**

15 6. Viome provides biological analysis products enabling consumers to receive  
16 information about their biological systems as well as personalized dietary and lifestyle  
17 recommendations based on their results.

18 7. Since at least April 5, 2017, Viome has used the VIOME mark in connection with  
19 goods and services related to the collecting, analyzing, reporting, and tracking data and  
20 information in the fields of genetics, genomics, microbiomics, metabolomics, proteomics,  
21 biochemistry, health, and individual lifestyle, and for providing health and wellness evaluations  
22 and recommendations based on genetic, genomic, microbiomic, metabolomic, proteomic,  
23 biochemical, health, and individual lifestyle data. In addition, Viome owns U.S. Trademark  
24 Registration No. 5,460,201 for VIOME and U.S. Trademark Registration No. 5,460,202 for the  
25 following design mark:  
26  
27

# VIOME

(See Exhibit A.) These registrations identify a wide variety of goods and services including, without limitation: “Beverages containing probiotics for use as a nutritional supplement; Beverages containing prebiotics for use as a nutritional supplement; Dietary supplement drink mixes; Dietary supplemental drinks; Dietary supplements; Food supplements; Powdered nutritional supplement concentrate; Powdered nutritional supplement drink mix; Health food supplements; Herbal supplements; Medical diagnostic test strips for collecting and analyzing genetic, genomic, microbiomic, metabolomic, proteomic, and biochemical data; Medical diagnostic test media in the form of strips, threads, swabs, cartridges, and collection tubes for measuring genetic, genomic, microbiomic, metabolomic, proteomic, and biochemical data; Mineral supplements; Nutritional supplement shakes; Nutritional supplements; Nutritional supplements, namely, probiotic compositions; Prebiotic supplements; Probiotic supplements; Protein supplements; Vitamin supplements” in International Class 005. Viome is also the owner of geographically-based common law rights in certain trademarks, including the VIOME mark, stemming from its significant, continuous and substantially exclusive use of those marks throughout the United States.

8. Viome markets, promotes and provides its products and related services throughout the United States and the world in association with its VIOME trademark, including at its [www.viome.com](http://www.viome.com) website. Viome’s promotion, advertising, and use of its trademark serves to identify Viome’s products and services, distinguish them from those of others, and identify Viome as the source of those products and services. Viome has invested substantial sums of money to promote its VIOME mark. As a result, the trademark has become a valuable asset of Viome with

1 significant goodwill.

2 9. On or about September 21, 2018 Viome became aware that Biohm was using the  
3 VIOME word mark in advertisements on Google.com. (See Exhibit B.) Viome has not granted  
4 Biohm permission to use the VIOME mark in any manner whatsoever. Biohm's counterfeit use of  
5 the VIOME mark is intended to mislead and confuse consumers into purchasing goods or services  
6 from Biohm when the consumers instead intend to purchase a good or service offered by or  
7 affiliated with Viome.  
8

9 10. As of the date of the filing of this complaint, Biohm is still using the VIOME mark  
10 on its Internet advertisements.  
11

12 WITH REFERENCE TO THE FOREGOING, Viome asserts the following claims against  
13 the defendant:

### 14 COUNT I

#### 15 INFRINGEMENT OF THE VIOME 16 TRADEMARK IN VIOLATION OF THE LANHAM ACT

17 11. Viome incorporates herein by reference and realleges the allegations contained in  
18 paragraphs 1 – 10 above.

19 12. Biohm has intentionally and/or willfully placed, or caused to be placed, the VIOME  
20 mark on its Internet advertisements in commerce, and has been using the VIOME mark in a manner  
21 intended to cause confusion or mistake on the part of consumers, and to deceive consumers as to  
22 the origin, sponsorship, and authenticity of its products. Without limitation, Biohm has engaged  
23 in the following conduct:

24 13. Biohm has intentionally and/or willfully placed or caused to be placed the VIOME  
25 mark on its Internet advertisements, including but not limited to Google.com, in a manner intended  
26 to confuse consumers into believing that there is an affiliation and/or sponsorship between Biohm  
27

1 and Viome.

2 14. Biohm has intentionally used the registered VIOME mark knowing such use of the  
3 mark constitutes an unauthorized and counterfeit use of the VIOME mark, as defined under 15  
4 U.S.C. § 1116(d), in an attempt to profit off of the reputation and goodwill associated with the  
5 VIOME mark.  
6

7 15. By including the VIOME mark on its Internet advertisements, Biohm is  
8 intentionally and/or willfully misleading the public into believing that it is affiliated and/or  
9 sponsored by Viome or into mistaking Viome as the source of Biohm's products.

10 16. Biohm's conduct, as described above, represents a calculated attempt by Biohm to  
11 confuse consumers thereby enabling Biohm to profit off of the goodwill and reputation of the  
12 VIOME mark.  
13

14 17. Biohm's conduct constitutes an infringement of Viome's exclusive rights to the  
15 VIOME trademarks, in violation of the Lanham Act, 15 U.S.C. § 1114(1)(a) and (b), and 15 U.S.C.  
16 § 1125(a)(1)(A) and (B).

17 18. As a result of Biohm's intentional and willful infringement of the VIOME mark,  
18 including Biohm's intentional counterfeit use of the VIOME mark, Viome is entitled to an award  
19 of any and all damages, profits, costs and attorney fees available under 15 U.S.C. § 1117(a) and  
20 (b). In addition, under 15 U.S.C. § 1117(c), Viome is entitled to elect the option of statutory  
21 damages of up to \$2,000,000 per type of goods or services sold, offered for sale, or distributed by  
22 Biohm in connection with its counterfeit use of the VIOME mark.  
23

24 19. On information and belief, Biohm had knowledge of Viome's trademark rights  
25 before engaging in its infringing activity. Viome has and continues to provide notice in marketing  
26 literature in association with its goods and services. Despite actual and/or constructive knowledge  
27

20. The acts of Biohm have caused and, unless restrained by this Court, will continue to cause serious and irreparable harm to Viome and to the goodwill associated with its VIOME trademarks. Moreover, Biohm will continue to unjustly benefit, at Viome's expense, from gains, profits and advances derived from the products and services provided in association with the infringing activity.

21. The infringement described herein will cause irreparable injury to Viome not fully compensable in monetary damages unless promptly enjoined. In the absence of injunctive relief, Viome will have no adequate remedy at law. A remedy in equity is warranted considering the balance of hardships, and the public interest in avoiding consumer confusion will be served by an injunction.

**COUNT II**

## UNFAIR COMPETITION IN VIOLATION OF RCW 19.86.020

22. Viome incorporates herein by reference and realleges the allegations contained in paragraphs 1 – 21 above.

23. Biohm's conduct as described herein constitutes unfair competition under the Revised Code of Washington 19.86.020.

24. Biohm's practice of intentionally and/or willfully placing the VIOME trademark in advertisements for Biohm's goods constitutes a willful attempt to mislead consumers, including Washington consumers, into believing that Biohm's goods are affiliated and/or sponsored by Viome. Such use of the VIOME mark constitutes an unfair method of competition and/or a

1 deceptive act in commerce.

2 25. Viome is entitled to all relief available under RCW 19.86.090, including but not  
3 limited to treble damages, attorney fees and injunctive relief.

4 26. Injunctive relief is warranted and necessary because Biohm's actions, if not  
5 enjoined, will cause irreparable injury to Viome. In the absence of injunctive relief, Viome will  
6 have no adequate remedy at law. A remedy in equity is warranted considering the balance of  
7 hardships, and the public interest in avoiding consumer confusion will be served by an injunction.  
8

9 **PRAYER FOR RELIEF**

10 Viome requests the following relief:

11 1. Preliminary and permanent injunctions entered against Biohm prohibiting the  
12 unauthorized use of the VIOME mark in any advertisement, offer for sale and/or sale of any  
13 products;  
14

15 2. Preliminary and permanent injunctions against the use of the mark VIOME or any  
16 other marks confusingly similar thereto, as a service mark, trademark, trade name, domain name  
17 or part thereof alone or in combination with other words, symbols, styles, titles or marks in  
18 connection with the provision of health or wellness services by Biohm;  
19

20 3. An order that Biohm destroy any marketing materials including but not limited to  
21 printed material, stationary, business forms, signs, advertisements, brochures, promotional  
22 material, manuals, pamphlets, labels, packages, containers, and all other materials, electronic or  
23 otherwise, bearing the mark VIOME or any derivative, colorable imitation, or confusingly similar  
24 marks, together with all means for making or reproducing the same, pursuant to 15 U.S.C. § 1118  
25 and other applicable law;  
26

27 4. An award of damages adequate to compensate for the infringement and the

1 disgorgement of Biohm's profits attributable to its infringing use of the VIOME mark, as provided  
2 under applicable law;

3 5. Exemplary and treble damages, costs to Viome in bringing this action, and Viome's  
4 reasonable attorneys' fees for bringing this action, to the maximum amount authorized by 15  
5 U.S.C. § 1117 and RCW 19.86.090;

6 6. Alternatively, as authorized under 15 U.S.C. § 1117(c), an award of statutory  
7 damages of up to \$2,000,000 per counterfeit mark per type of goods or services sold, offered for  
8 sale, or distributed by Biohm;

9 7. An assessment of prejudgment interest and costs; and

10 8. Such other and further relief as the Court may deem just and proper.

11  
12 Dated this 23<sup>rd</sup> day of October, 2018.

13  
14 /s/ Nathan T. Paine

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